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Equal Employment Opportunity Commission v. Carnegie Deli, Inc.

Judge Jose L. Linares

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Equal Employment Opportunity Commission v. Carnegie Deli, Inc.

Keywords

EEOC, Carnegie Deli Inc., 04-3239 (JLL), Consent Decree, Hostile Work Environment, Constructive Discharge, Sexual Harassment, Sex, Female, Retail, Title VII, Employment Law

B. This Consent Decree is entered into by and shall be final and binding between the EEOC and Carnegie Deli, its directors, officers, agents, successors and assigns.

C. EEOC and Carnegie Deli agree to the entry of this Consent Decree, which shall fully and finally resolve all claims the EEOC raised in its Complaint in Civil Action No. 04-3239 (JLL).

D. This Consent Decree shall not constitute either an adjudication of or finding on the merits of the complaint and shall not be construed as an admission by Defendant of any violation of Title VII.

Findings

E. Having carefully examined the terms and provisions of this Consent Decree, and based on the pleadings, record and stipulations of the parties, the Court finds: (1) it has jurisdiction of the parties and subject matter jurisdiction of this action; and (2) the terms of this Decree are fair, reasonable, equitable and just, and adequately protect the rights of the parties, and the public interest.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

Non-Discrimination and Non-Retaliation

1. This Court has jurisdiction over the parties and subject matter of this action.
2. Defendant will not harass any employee on the basis of sex in violation of Title VII.
3. Defendant will not engage in any employment practices which retaliate in any manner against any person, including but not limited to Norma Rivera and the identified class of female former employees, because of their opposition to any practice made an unlawful employment practice under Title VII or because either person has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under Title VII.
4. Should an inquiry be made by a prospective employer of one of the named individuals in this lawsuit, Defendant shall only divulge to any identifiable employer or potential

employer limited information such as the start date, position title, final salary and end date and indicate that such limited disclosure is part of its business practice.

5. Nothing in this Consent Decree, either by inclusion or exclusion, shall be construed to limit the obligations of Defendant under Title VII or the EEOC's authority to process or litigate any charge of discrimination now pending or filed in the future against Defendant.

Monetary Relief

6. In full settlement of the claims raised on their behalf against Defendant in the EEOC's Complaint, Carnegie Deli agrees to pay the sum total of \$90,000.00 to be distributed to the identified claimants as indicated in **Attachment A**. Each claimant will be required to promptly execute the attached Release (**Attachment B**) which will be forwarded to Carnegie Deli in order to receive the monetary payment.

7. Within fourteen (14) days after Carnegie Deli has received the executed Release from all the claimants, Defendant will make the monetary payment to the claimants. Carnegie Deli will submit proof of payment by mailing a copy of each check issued in this matter to: Marisol Ramos, Trial Attorney, EEOC, Philadelphia District Office, 21 S. Fifth Street, Suite 400, Philadelphia, PA 19106-2515. Late payment of the check will be subject to the accrual of interest on the unpaid amount, calculated pursuant to 28 U.S.C. § 1961.

Posting of Notice

8. Within 20 business days after entry of this Decree, Defendant shall post at its Carnegie Deli work site(s) on all bulletin boards, used by Defendant for communicating with employees, same-sized copies of the Notice attached as **Attachments C** (in English) **and D** (in Spanish) to this Decree. The Notice shall remain posted for two and a half (2 ½) years from the date of entry of this Decree. Defendant shall forward a certification that the Notice has been

posted and dates of posting within 30 days after entry of this Decree to Marisol Ramos, Trial Attorney, EEOC, Philadelphia District Office, 21 South Fifth Street, Suite 400, Philadelphia, PA 19106-2515. If posted copies become defaced, removed, marred or otherwise illegible, Defendant agrees to post a readable copy in the same manner as heretofore specified.

9. Within thirty (30) business days after the entry of this Decree, Defendant shall schedule a staff meeting during which it will read the attached Notice, Attachments A and B in English and Spanish to all its employees. Defendant shall forward a certification that the Notice has been read and dates of reading within (40) days after entry of this Decree to Marisol Ramos, Trial Attorney, EEOC, Philadelphia District Office, 21 South Fifth Street, Suite 400, Philadelphia, PA 19106-2515.

Non-Discrimination and Anti-Harassment Policies and Complaint Procedures

10. Defendant agrees to draft a policy against discrimination, harassment and retaliation and complaint procedures, which shall be drafted in plain and simple language. This policy shall be drafted in English and Spanish. Defendant shall ensure that its policy or policies against discrimination, harassment and retaliation and related complaint procedures meet the following minimum criteria:

(a) state that Defendant: (i) prohibits discrimination against employees on the basis of sex, and prohibits retaliation in violation of Title VII; (ii) prohibits retaliation against employees for opposing employment practices they reasonably believe are discriminatory or for participating in an investigation by the EEOC or a state or local governmental agency of a charge of discrimination under Title VII; (iii) prohibits any act, policy or practice that has the effect of harassing or intimidating any employee on the basis of sex, in violation of Title VII; and (iv) prohibits any act, policy or practice that has the effect of creating, facilitating or permitting the existence of a work environment that is hostile to employees through acts such as physical/verbal

abuse and derogatory comments based on sex, in violation of Title VII;

(b) include a complaint procedure designed to encourage employees to come forward with complaints regarding violations of its policy or policies against discrimination, harassment and retaliation, which shall meet the following minimum criteria: (i) provide effective mechanism(s) for reporting incidents of discrimination, harassment and retaliation; (ii) provide that the complaints of discrimination, harassment and/or retaliation can be made either in writing or verbally; (iii) identify an employee or employees at Defendant's worksite(s), to whom an employee can make a complaint; (iv) encourage prompt reporting by employees; and (v) provide assurances that complainants shall not be subjected to retaliation;

(c) provide for prompt investigation of complaints of harassment and/or retaliation;

(d) provide for prompt communication to the complaining party of the results of the investigation and any remedial actions taken or proposed; and

(e) provide for discipline up to and including discharge of an employee or supervisor who violates Defendant's policy or policies against discrimination, harassment and retaliation, and for increasingly severe discipline of repeat offenders.

10. Defendant shall distribute to all of its employees and newly-hired employees, its policy or policies against discrimination, harassment and retaliation within 30 days after entry of this Consent Decree.

11. Within 60 days after entry of this Consent Decree, Defendant shall advise Marisol Ramos, Trial Attorney, EEOC Philadelphia District Office, that its policy or policies against discrimination, harassment and retaliation have been distributed to current employees, including temporary employees, via paycheck enclosure and that new employees, including temporary employees, will receive these policies and an opportunity to acknowledge receipt. Defendant will retain copies of any acknowledgment of receipt form for an employee in the employee's

personnel file.

12. Defendant shall annually for the duration of the Consent Decree send a copy of its policy or policies against discrimination, harassment and retaliation with each employee's paycheck.

Supervisor Accountability

13. Defendant shall promote supervisor accountability by the following conduct:

(a) providing annual anti-discrimination training to all of its supervisory and managerial personnel as set forth in Paragraphs 14;

(b) disciplining, up to and including discharge, any supervisor or manager who violates Defendant's policy or policies against discrimination, harassment and retaliation; and

(c) imposing on all managers and supervisory personnel a duty to administer their work areas to ensure compliance with Defendant's policy against discrimination, harassment and retaliation; and

(d) requiring all managers and supervisors to report any incidents and/or complaints of harassment and/or retaliation of which they become aware to the employee or employees designated to handle complaints of discrimination, harassment and retaliation.

Training

14. Defendant shall provide training on the requirements of Title VII as follows:

(a) Defendant agrees to provide annual training sessions in English and Spanish for any employee or employees at its Carnegie Deli work site responsible for responding to Title VII complaints made at Carnegie Deli by a vendor approved by the EEOC. The training will cover employee rights and employer obligations under both Title VII and relevant state or local anti-discrimination laws. Defendant will emphasize what constitutes unlawful harassment and discrimination in the workplace, how to keep the company free from such discrimination, what

constitutes unlawful retaliation, and will summarize how to conduct a prompt and effective investigation into allegations, complaints or charges of discrimination;

(b) Defendant shall first provide training in accordance with Paragraph 13(a) by no later than 90 calendar days after entry of this Consent Decree and also shall provide such training in calendar years 2006 and 2007.

15. Defendant shall obtain the EEOC's approval of its proposed trainer prior to each year's training sessions.

16. Defendant agrees at its expense to provide the EEOC with copies of all pamphlets, brochures, outlines or other written materials provided to attendees of training sessions. Even though the EEOC has approved of or designated a trainer to provide training for one year, it is not required to approve of or designate the same trainer for future training sessions. However, Defendant shall ensure that the trainer is fluent in English and Spanish and provides the sessions in each language.

17. Defendant shall certify to the EEOC in writing within 10 business days after the training sessions required by Paragraph 13 have occurred that the training has taken place and the personnel who attended. Such certification shall include: (i) the dates, location and duration of the training session; (ii) a copy of the registry of attendance, including the name and position of each person in attendance; and (iii) a listing of the employee or employees at Carnegie Deli's work site(s), responsible for responding to Title VII complaints made at Carnegie Deli as of the date of the training.

18. Defendant shall furnish to the EEOC the following written reports annually for a period of three years following entry of this Decree, with the first report due six months after entry of the Decree and the final report due 36 months after entry of the Decree. Each such report shall contain:

(a) a certification by Defendant that the Notice required to be posted by Paragraph 8 was posted during the six months preceding the report;

(b) a certification by Defendant that it has or will distribute the policy or policies against discrimination, harassment and retaliation annually to employees, and that Defendant has disseminated the policy against discrimination, harassment and retaliation to all new employees, including temporary employees, hired within the six-month period preceding the report;

(c) a certification that Defendant has complied with training requirements of this Consent Decree;

(d) a summary of any additional actions Defendant took to prevent discrimination, harassment and retaliation at Carnegie Deli's work site(s) during the six-month period preceding the report.

Dispute Resolution

19. In the event either party to this Decree believes the other party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-compliance within 20 days of the alleged non-compliance and afford the alleged non-complying party 20 business days to remedy the non-compliance or satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within 20 business days, the complaining party may apply to the Court for appropriate relief.

Miscellaneous Provisions

20. Each party to this Decree shall bear its own expenses, costs and attorneys' fees.

21. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, successors and assigns of Defendant in their capacities as representatives, agents, directors and officers of Defendant and not in their individual

capacities. This paragraph shall not be construed as placing any limit on remedies available to the Court in the event any individual is found in contempt for a violation of this Decree.

22. This Consent Decree shall fully and finally resolve all claims which were raised by the EEOC in its Complaint in Civil Action No. 04-3239.

23. This Consent Decree shall be filed in the United States District Court for New Jersey and shall continue in effect for three (3) years. During this time, this Court shall retain jurisdiction over this matter and the parties for purposes of enforcing compliance with the Decree, including issuing such orders as may be required to effectuate its purposes. Any application by any party to modify or vacate this Consent Decree during such period shall be made by motion to the Court on no less than 30 days' notice to the other party. Should any material disputes under this Decree remain unresolved after this three-year period, the term of the Decree shall be automatically extended (and the Court will retain jurisdiction of this matter to enforce the Consent Decree) until such time as all disputes have been resolved.

24. The Clerk of the District Court is hereby directed to send a file-stamped copy of this Consent Decree to counsel of record.

For Plaintiff EEOC:

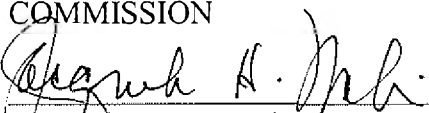
For Defendant Carnegie Deli Inc.:


Eric S. Dreiband
General Counsel

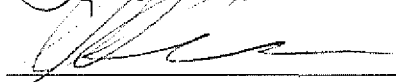
James L. Lee
Deputy General Counsel

Gwendolyn Young Reams
Associate General Counsel
Wash., D.C.

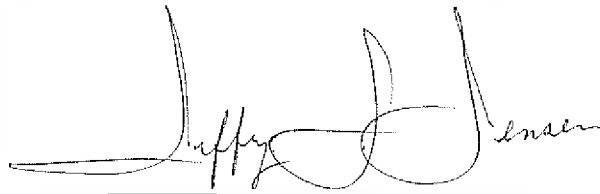
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION



Jacqueline H. McNair
Regional Attorney



Iris Santiago-Flores
Acting Supervisory Trial Attorney


Marisol Ramos
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Philadelphia District Office
21 S. 5th Street, Suite 400
Philadelphia, PA 19106
(215) 440-2828


Jeffrey Jensen
Operations Manager at Carnegie Deli, Inc.


Joseph G. Monaghan, Esq.
Attorney for Defendant Carnegie Deli, Inc.
11 State Street
Hackensack, NJ 07601
(201) 488-7544

By the Court: 
THE HONORABLE JUDGE JOSE L. LINARES
UNITED STATES DISTRICT JUDGE

Date: 9/13/05

ATTACHMENT A

U.S. Equal Employment Opportunity Commission
 Philadelphia District Office
 21 South Fifth Street, Suite 400
 Philadelphia, PA 19106-2515
 (215) 440-2619
 Marisol Ramos, Trial Attorney
 MR-8741
Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEW JERSEY**

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 04-3239(JLL)
)	
CARNEGIE DELI, INC.,)	
)	
Defendant.)	
)	

Distribution of monetary relief to the eight claimants will be as follows:

Norma Rivera	\$40,000.00
Yolanda Bocanegra	\$10,000.00
Maria Rosario	\$10,000.00
Maritza Giraldo	\$8,334.00
Carmen Salazar	\$8,333.00
Deysi Rodríguez	\$8,333.00
Consuelo Serna	\$2,500.00
Altagracia Gutierrez	\$2,500.00

ATTACHMENT B

U.S. Equal Employment Opportunity Commission
Philadelphia District Office
21 South Fifth Street, Suite 400
Philadelphia, PA 19106-2515
(215) 440-2619
Marisol Ramos, Trial Attorney
MR-8741
Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 04-3239(JLL)
)	
CARNEGIE DELI, INC.,)	
)	
Defendant,)	
_____)	

RELEASE BY CLAIMANT

Pursuant to the terms of the Consent Decree entered into by the Equal Employment Opportunity Commission ("EEOC") and Carnegie Deli Inc., in the above-captioned case, I, (name) _____, do hereby waive, remit, release and forever discharge Carnegie Deli Inc., its parent and subsidiary companies, and affiliates, and any and all of the officers, directors, agents, attorneys, employees, and members of such entities from any and all claims, demands or causes of action under Title VII, including attorneys fees and costs, arising from or relating to any right or entitlement now existing until the date of execution of this Release for claims arising from or allegations made in EEOC et.al. v. Carnegie Deli Inc., Civil Action 04-3239(JLL), based on claims of sex-based harassment and disparate treatment occurring prior to this date. This Release is freely executed in return for the good and valuable consideration set forth in the above-referenced Consent Decree.

Date: _____, 2005

SIGNATURE: _____
Name: (Print) _____

Sworn to and Subscribed
Before me this _____ day of
_____, 2005.

NOTARY PUBLIC
My Commission Expires:

ATTACHMENT C

NOTICE TO ALL CARNEGIE DELI INC EMPLOYEES

This Notice is posted pursuant to a Consent Decree entered by the federal court for the District of New Jersey in EEOC v. Carnegie Deli, Civil Action Number 04-3239, resolving a lawsuit filed by the Equal Employment Opportunity Commission ("EEOC") against Carnegie Deli Inc. ("Carnegie Deli").

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as amended ("Title VII"), prohibits discrimination against employees and applicants for employment based upon national origin, sex, race, color or religion. Title VII further prohibits retaliation against employees or applicants who avail themselves of their rights under Title VII by engaging in protected activities, such as filing a charge of discrimination and/or testifying or participating in a Commission investigation. The EEOC is the federal agency which investigates charges of unlawful employment discrimination. The EEOC has the authority to bring lawsuits in federal court to enforce Title VII.

In its lawsuit, the EEOC alleged that Carnegie Deli subjected female employees to harassment based on sex, causing the employees to constructively discharge, in violation of Title VII of the Civil Rights Act of 1964 ("Title VII").

To resolve the case, Carnegie Deli and the EEOC have entered into a Consent Decree which provided, among other things, that: (1) Carnegie Deli agrees that it will not discriminate on the basis of sex in the future; (2) Carnegie Deli will not retaliate against any person because he or she opposed any practice made unlawful by Title VII, filed a Title VII charge of discrimination, participated in any Title VII proceeding, or asserted any rights under the Consent Decree; and (3) Carnegie Deli will train any employee or employees at Carnegie Deli work site(s) with responsibility for responding to Title VII complaints made by Carnegie Deli employees, regarding discrimination, harassment and retaliation, and regarding its policy prohibiting discrimination, harassment and retaliation.

If you believe you have been discriminated against, you may contact the EEOC at (215) 440-2600. The EEOC charges no fees and has employees who speak languages other than English.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for two and one-half years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to the Regional Attorney, EEOC Philadelphia District Office, 21 South 5th Street, Philadelphia, PA 19106.

U.S. Equal Employment Opportunity
Commission

Carnegie Deli Inc.

DATED: _____

DATED: _____

ATTACHMENT D

AVISO A TODOS LOS EMPLEADOS DE CARNEGIE DELI INC

Esta Notificación se publica en seguimiento a un acuerdo entrado ante la corte federal para el Distrito de Nueva Jersey en el caso EEOC v. Carnegie Deli Civil Núm. 04-3239, el cual pone fin a la demanda radicada por la Comisión de Igualdad de Oportunidades en el Empleo, "EEOC" por sus siglas en ingles contra la compañía Carnegie Deli ("Carnegie Deli").

El Título VII de la Ley de Derechos Civiles de 1964, 24 U.S.C. § 2000e et seq., según enmendada ("Título VII) prohíbe el discrimen en contra de empleados o aplicantes a empleo por razón de origen nacional, género, raza, color, o religión. El Título VII prohíbe además la represalia en contra de empleados o aplicantes a empleo por ejercer sus derechos bajo el Título VII mediante su participación en actividades protegidas, tales como la radicación de un cargo por discrimen y/o brindar testimonio o participar en una investigación llevada a cabo por la Comisión. La Comisión de Igualdad de Oportunidades en el Empleo es la agencia federal que investiga cargos por discrimen en el empleo. La Comisión tiene la autoridad de radicar demandas en la corte federal para poner en vigor el Título VII.

En su demanda, la Comisión alegó que Carnegie Deli sometió a las empleadas a hostigamiento sexual, causando que las mismas fueran despedidas constructivamente, en violación del Título VII de la Ley de Derechos Civiles de 1964 ("Título VII")

Para resolver el caso, Carnegie Deli y la Comisión han entrado en un acuerdo que provee, entre otras cosas, que: (1) Carnegie Deli accede a que no va a discriminar en el futuro por razón de género; (2) Carnegie Deli no ejercerá represalia contra ninguna persona que se halla opuesto a una practica declarada ilícita bajo el Título VII, hallan radicado un cargo al amparo del Título VII, participado en un proceso al amparo del Título VII, o hallan ejercido algún derecho al amparo de este acuerdo; y (3) Carnegie Deli proveerá entrenamiento a cualquier empleado o empleados en las facilidades de Carnegie Deli con la responsabilidad de responder a las reclamaciones al amparo del Título VII hechas por empleados de Carnegie Deli, relacionadas a discrimen, hostigamiento y represalia y relacionadas a su política prohibiendo discrimen hostigamiento o represalia.

Si usted cree que ha sido discriminado, puede contactar la Comisión al (215) 440-2600. La Comisión no cobra ningún tipo de cargo por sus servicios y tiene empleados que hablan otros idiomas que no son el inglés.

ESTA ES UNA NOTIFICACION OFICIAL Y NO DEBE SER DESTRUIDA POR NADIE

Esta Notificación deberá permanecer publicada por dos años y medio desde la fecha de abajo y no podrá ser alterada, dañada o cubierta con algún otro material. Cualquier pregunta acerca de esta Notificación o el cumplimiento de sus términos deberá ser dirigida a la Abogada Regional, EEOC Philadelphia District Office, 21 South 5th Street, Philadelphia, PA 19106.

Comisión de Oportunidades en el Empleo

Carnegie Deli, Inc.

Fecha: _____

Fecha: _____